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*Attorneys for (Proposed) Intervenor-Defendants*

CALIFORNIANS TO DEFEND THE OPEN PRIMARY  
and INDEPENDENT VOTER PROJECT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEACE AND FREEDOM PARTY OF  
CALIFORNIA, *et al.*,

*Plaintiffs,*

vs.

Dr. SHIRLEY N. WEBER, CALIFORNIA  
SECRETARY OF STATE,

*Defendant.*

CALIFORNIANS TO DEFEND THE  
OPEN PRIMARY and INDEPENDENT  
VOTER PROJECT,

*(Proposed) Intervenor-Defendants.*

Case No. 4:24-cv-08308-MMC

**[Proposed] ANSWER IN  
INTERVENTION OF  
CALIFORNIANS TO DEFEND THE  
OPEN PRIMARY and THE  
INDEPENDENT VOTER PROJECT**

DATE: March 28, 2025

TIME: 9:00 a.m.

COURTROOM: 7 (19th Floor)

JUDGE: Hon. Maxine M. Chesney

1 Proposed Intervenor-Defendants CALIFORNIANS TO DEFEND THE OPEN  
2 PRIMARY and the INDEPENDENT VOTER PROJECT (hereinafter “Intervenor-  
3 Defendants”) offer the following Proposed Answer to the Complaint filed by Plaintiffs  
4 Peace and Freedom Party of California, Libertarian Party of California, Green Party  
5 of California, Gail Lightfoot, Joe Dehn, Sean Dougherty, William Patterson, Aaron  
6 Reveles, and Shannel Pittman (hereinafter “Plaintiffs”) as follows:

7 1. Answering the Introduction of the Complaint, Intervenor-Defendants  
8 admit that California’s Top-Two Candidate Open Primary Law provides for the  
9 advancement of only the two candidates for “voter-nominated” offices receiving the  
10 most votes in the in the primary election, regardless of party affiliation, to the  
11 general election, with limited exceptions for ties and the death of a candidate after the  
12 primary. Intervenor-Defendants also admit that write-in votes are not counted at the  
13 general election. *See* Elec. Code §§ 8606, 13105. Intervenor-Defendants also admit  
14 that the primary election for voter-nominated offices during the 2024 election cycle  
15 was held on March 5, 2024. Intervenor-Defendants deny each and every other  
16 allegation of the Introduction on the grounds that such allegations pertain to legal  
17 arguments and conclusions and are not factual allegations that must be admitted or  
18 denied. Insofar as the allegations thereof could be construed as including any  
19 allegations of fact, Intervenor-Defendants deny each and every other allegation of the  
20 Introduction.

21 2. Answering Paragraph 1 of the Complaint, Intervenor-Defendants admit  
22 that jurisdiction is proper in this Court. Otherwise, Intervenor-Defendants deny each  
23 and every allegation therein on the grounds that such allegations pertain to legal  
24 arguments and conclusions and are not factual allegations that must be admitted or  
25 denied. Insofar as the allegations thereof could be construed as including any  
26 allegations of fact, Intervenor-Defendants deny each and every allegation of  
27 Paragraph 1.

28 3. Answering Paragraph 2 of the Complaint, Intervenor-Defendants admit

1 that venue is proper in this Court. Insofar as the allegations of Paragraph 2 could be  
2 construed as including any allegations of fact, Intervenor-Defendants deny each and  
3 every allegation of Paragraph 2.

4 4. Answering Paragraph 3 of the Complaint, Intervenor-Defendants lack  
5 sufficient knowledge or information to form a belief as to the truth of the allegations  
6 of Paragraph 3, and on that basis deny each and every allegation of Paragraph 3.  
7 Intervenor-Defendants further deny each and every allegation therein on the grounds  
8 that such allegations pertain to legal arguments and conclusions and are not factual  
9 allegations that must be admitted or denied.

10 5. Answering Paragraph 4 of the Complaint, Intervenor-Defendants lack  
11 sufficient knowledge or information to form a belief as to the truth of the allegations  
12 of Paragraph 4, and on that basis deny each and every allegation of Paragraph 4.  
13 Intervenor-Defendants further deny each and every allegation therein on the grounds  
14 that such allegations pertain to legal arguments and conclusions and are not factual  
15 allegations that must be admitted or denied.

16 6. Answering Paragraph 5 of the Complaint, Intervenor-Defendants lack  
17 sufficient knowledge or information to form a belief as to the truth of the allegations  
18 of Paragraph 5, and on that basis deny each and every allegation of Paragraph 5.  
19 Intervenor-Defendants further deny each and every allegation therein on the grounds  
20 that such allegations pertain to legal arguments and conclusions and are not factual  
21 allegations that must be admitted or denied.

22 7. Answering Paragraph 6 of the Complaint, Intervenor-Defendants lack  
23 sufficient knowledge or information to form a belief as to the truth of the allegations  
24 of Paragraph 6, and on that basis deny each and every allegation of Paragraph 6.  
25 Intervenor-Defendants further deny each and every allegation therein on the grounds  
26 that such allegations pertain to legal arguments and conclusions and are not factual  
27 allegations that must be admitted or denied.

28 8. Answering Paragraph 7 of the Complaint, Intervenor-Defendants lack

1 sufficient knowledge or information to form a belief as to the truth of the allegations  
2 of Paragraph 7, and on that basis deny each and every allegation of Paragraph 7.  
3 Intervenor-Defendants further deny each and every allegation therein on the grounds  
4 that such allegations pertain to legal arguments and conclusions and are not factual  
5 allegations that must be admitted or denied.

6 9. Answering Paragraph 8 of the Complaint, Intervenor-Defendants lack  
7 sufficient knowledge or information to form a belief as to the truth of the allegations  
8 of Paragraph 8, and on that basis deny each and every allegation of Paragraph 8.  
9 Intervenor-Defendants further deny each and every allegation therein on the grounds  
10 that such allegations pertain to legal arguments and conclusions and are not factual  
11 allegations that must be admitted or denied.

12 10. Answering Paragraph 9 of the Complaint, Intervenor-Defendants lack  
13 sufficient knowledge or information to form a belief as to the truth of the allegations  
14 of Paragraph 9, and on that basis deny each and every allegation of Paragraph 9.  
15 Intervenor-Defendants further deny each and every allegation therein on the grounds  
16 that such allegations pertain to legal arguments and conclusions and are not factual  
17 allegations that must be admitted or denied.

18 11. Answering Paragraph 10 of the Complaint, Intervenor-Defendants lack  
19 sufficient knowledge or information to form a belief as to the truth of the allegations  
20 of Paragraph 10, and on that basis deny each and every allegation of Paragraph 10.  
21 Intervenor-Defendants further deny each and every allegation therein on the grounds  
22 that such allegations pertain to legal arguments and conclusions and are not factual  
23 allegations that must be admitted or denied.

24 12. Answering Paragraph 11 of the Complaint, Intervenor-Defendants lack  
25 sufficient knowledge or information to form a belief as to the truth of the allegations  
26 of Paragraph 11, and on that basis deny each and every allegation of Paragraph 11.  
27 Intervenor-Defendants further deny each and every allegation therein on the grounds  
28 that such allegations pertain to legal arguments and conclusions and are not factual

1 allegations that must be admitted or denied.

2 13. Answering Paragraph 12 of the Complaint, Intervenor-Defendants lack  
3 sufficient knowledge or information to form a belief as to the truth of the allegations  
4 of Paragraph 12, and on that basis deny each and every allegation of Paragraph 12.

5 14. Answering Paragraph 13 of the Complaint, Intervenor-Defendants lack  
6 sufficient knowledge or information to form a belief as to the truth of the allegations  
7 of Paragraph 13, and on that basis deny each and every allegation of Paragraph 13.

8 15. Answering Paragraph 14 of the Complaint, Intervenor-Defendants  
9 admit that Defendant Dr. Shirley N. Weber serves as Secretary of State for the State  
10 of California, and in that capacity is responsible for serving as the chief elections  
11 officer of the State of California. *See* Cal. Elec. Code § 10(a); Cal. Gov. Code § 12172.5.

12 16. Answering Paragraph 15 of the Complaint, Intervenor-Defendants  
13 admit that California's Top-Two Candidate Open Primary Law was added to the  
14 California Constitution through a vote of the People at the June 2010 primary  
15 election, and that the measure (Proposition 14) was referred to the ballot by the  
16 California Legislature. Intervenor-Defendants also admit that Proposition 14 became  
17 operative on January 1, 2011.

18 17. Answering Paragraph 16 of the Complaint, Intervenor-Defendants  
19 admit that California's Top-Two Candidate Open Primary Law designates statewide  
20 executive offices and state and federal legislative offices as "voter-nominated" offices.

21 18. Answering Paragraph 17 of the Complaint, Intervenor-Defendants  
22 admit that the Legislature possesses the statutory authority to set the election date  
23 for primary elections, including those for voter-nominated offices, and that such  
24 elections are currently held in June in non-presidential election years. Cal. Elec. Code  
25 §§ 1001(b), 1201. Intervenor-Defendants also admit that all qualified voters and  
26 qualified candidates are permitted to participate in primary elections for voter-  
27 nominated offices, without regard to party affiliation. *See Rubin v. Padillia*, 233 Cal.  
28 App. 4th 1128, 1138 (2015) (citing Cal. Const., art. II, § 5, subd. (a); Elec. Code, §§

1 359.5, 1200, 1201.)

2 19. Answering Paragraph 18 of the Complaint, Intervenor-Defendants  
3 admit that the Legislature possesses the statutory authority to set the election date  
4 for primary elections, including those for voter-nominated offices, and that such  
5 elections are currently held in March in presidential election years. Cal. Elec. Code §  
6 1202.

7 20. Answering Paragraph 19 of the Complaint, Intervenor-Defendants  
8 admit that the primary for voter-nominated offices in 2024 was held on March 5,  
9 2024.

10 21. Answering Paragraph 20 of the Complaint, Intervenor-Defendants  
11 admit that the primary for voter-nominated offices under California's Top-Two  
12 Candidate Open Primary Law does not directly result in the election of any candidate  
13 for any office, but rather results in the placement of the candidates who are the top  
14 two recipients of votes, regardless of party affiliation, on the general election ballot.

15 22. Answering Paragraph 21 of the Complaint, Intervenor-Defendants  
16 admit the allegation that California does not count write-in votes cast at the general  
17 election for voter-nominated offices covered by California's Top-Two Candidate Open  
18 Primary Law. *See* Cal. Elec. Code §§ 8606, 13105(a); *Field v. Bowen*, 199 Cal. App.  
19 4th 346, 350 (2011).

20 23. Answering Paragraph 22 of the Complaint, Intervenor-Defendants  
21 admit the allegation that only the candidates for voter-nominated office who receive  
22 the highest or second highest number of votes at the primary election are permitted  
23 to appear on the general election ballot, with limited exceptions for tie votes or the  
24 death of a candidate. *See* Cal. Elec. Code § 8141.5.

25 24. Answering Paragraph 23 of the Complaint, Intervenor-Defendants  
26 admit the allegation that only the candidates for voter-nominated office who receive  
27 the highest or second highest number of votes at the primary election are permitted  
28 to appear on the general election ballot and be elected into office, with limited

1 exceptions for tie votes or the death of a candidate. *See* Cal. Elec. Code § 8141.5.

2       25. Answering Paragraph 24 of the Complaint, Intervenor-Defendants  
3 admit the allegation that California’s Top-Two Candidate Open Primary Law  
4 “effected a substantial change in the California electoral process.” *Rubin*, 233 Cal.  
5 App. 4th at 1138.

6       26. Answering Paragraph 25 of the Complaint, Intervenor-Defendants  
7 admit that prior to the passage of Proposition 14, “the primary election served to  
8 designate the party nominees for what are now voter-nominated offices.” *Id.* at 1138.  
9 They also admit that is no longer the case.

10       27. Answering Paragraph 26 of the Complaint, Intervenor-Defendants deny  
11 each and every allegation therein on the grounds that such allegations pertain to  
12 legal arguments and conclusions and are not factual allegations that must be  
13 admitted or denied. Proposition 14 and the implementing statutes adopted by the  
14 Legislature speak for themselves. Insofar as the allegations thereof could be  
15 construed as including any allegations of fact, Intervenor-Defendants deny each and  
16 every allegation of Paragraph 26.

17       28. Answering Paragraph 27 of the Complaint, Intervenor-Defendants deny  
18 each and every allegation therein on the grounds that such allegations pertain to  
19 legal arguments and conclusions and are not factual allegations that must be  
20 admitted or denied. Proposition 14 and the implementing statutes adopted by the  
21 Legislature speak for themselves. Insofar as the allegations thereof could be  
22 construed as including any allegations of fact, Intervenor-Defendants deny each and  
23 every allegation of Paragraph 27.

24       29. Answering Paragraph 28 of the Complaint, Intervenor-Defendants deny  
25 each and every allegation therein on the grounds that such allegations pertain to  
26 legal arguments and conclusions and are not factual allegations that must be  
27 admitted or denied. Proposition 14 and the implementing statutes adopted by the  
28 Legislature speak for themselves. Insofar as the allegations thereof could be



1 construed as including any allegations of fact, Intervenor-Defendants deny each and  
2 every allegation of Paragraph 28.

3 30. Answering Paragraph 29 of the Complaint, Intervenor-Defendants deny  
4 each and every allegation therein on the grounds that such allegations pertain to  
5 legal arguments and conclusions and are not factual allegations that must be  
6 admitted or denied. Proposition 14 and the implementing statutes adopted by the  
7 Legislature speak for themselves. Insofar as the allegations thereof could be  
8 construed as including any allegations of fact, Intervenor-Defendants deny each and  
9 every allegation of Paragraph 29.

10 31. Answering Paragraph 30 of the Complaint, Intervenor-Defendants deny  
11 each and every allegation therein on the grounds that such allegations pertain to  
12 legal arguments and conclusions and are not factual allegations that must be  
13 admitted or denied. Proposition 14 and the implementing statutes adopted by the  
14 Legislature speak for themselves. Insofar as the allegations thereof could be  
15 construed as including any allegations of fact, Intervenor-Defendants deny each and  
16 every allegation of Paragraph 30. Without limiting the generality of these denials,  
17 Intervenor-Defendants specifically deny that Proposition 14 discriminates amongst  
18 qualified political parties. *See, e.g., Rubin*, 233 Cal. App. 4th at 1153 (“The top-two  
19 system, in contrast, makes no ... distinction among candidates or political parties.”).

20 32. Answering Paragraph 31 of the Complaint, Intervenor-Defendants deny  
21 each and every allegation therein on the grounds that such allegations pertain to  
22 legal arguments and conclusions and are not factual allegations that must be  
23 admitted or denied. Proposition 14 and the implementing statutes adopted by the  
24 Legislature speak for themselves. Insofar as the allegations thereof could be  
25 construed as including any allegations of fact, Intervenor-Defendants deny each and  
26 every allegation of Paragraph 31.

27 33. Answering Paragraph 32 of the Complaint, Intervenor-Defendants deny  
28 each and every allegation therein on the grounds that such allegations pertain to



1 legal arguments and conclusions and are not factual allegations that must be  
2 admitted or denied. Insofar as the allegations thereof could be construed as including  
3 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
4 Paragraph 32.

5 34. Answering Paragraph 33 of the Complaint, Intervenor-Defendants deny  
6 each and every allegation therein on the grounds that such allegations pertain to  
7 legal arguments and conclusions and are not factual allegations that must be  
8 admitted or denied. Insofar as the allegations thereof could be construed as including  
9 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
10 Paragraph 33.

11 35. Answering Paragraph 34 of the Complaint, Intervenor-Defendants deny  
12 each and every allegation therein on the grounds that such allegations pertain to  
13 legal arguments and conclusions and are not factual allegations that must be  
14 admitted or denied. Insofar as the allegations thereof could be construed as including  
15 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
16 Paragraph 34.

17 36. Answering Paragraph 35 of the Complaint, Intervenor-Defendants deny  
18 each and every allegation therein on the grounds that such allegations pertain to  
19 legal arguments and conclusions and are not factual allegations that must be  
20 admitted or denied. Insofar as the allegations thereof could be construed as including  
21 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
22 Paragraph 35.

23 37. Answering Paragraph 36 of the Complaint, Intervenor-Defendants deny  
24 each and every allegation therein on the grounds that such allegations pertain to  
25 legal arguments and conclusions and are not factual allegations that must be  
26 admitted or denied. Insofar as the allegations thereof could be construed as including  
27 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
28 Paragraph 36.

1           38. Answering Paragraph 37 of the Complaint, Intervenor-Defendants  
2 incorporate their responses to the allegations in paragraphs 1 through 36 in full, as  
3 set forth herein above.

4           39. Answering Paragraph 38 of the Complaint, Intervenor-Defendants deny  
5 each and every allegation therein on the grounds that such allegations pertain to  
6 legal arguments and conclusions and are not factual allegations that must be  
7 admitted or denied. Insofar as the allegations thereof could be construed as including  
8 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
9 Paragraph 38.

10           40. Answering Paragraph 39 of the Complaint, Intervenor-Defendants deny  
11 each and every allegation therein on the grounds that such allegations pertain to  
12 legal arguments and conclusions and are not factual allegations that must be  
13 admitted or denied. Insofar as the allegations thereof could be construed as including  
14 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
15 Paragraph 39.

16           41. Answering Paragraph 40 of the Complaint, Intervenor-Defendants deny  
17 each and every allegation therein on the grounds that such allegations pertain to  
18 legal arguments and conclusions and are not factual allegations that must be  
19 admitted or denied. Insofar as the allegations thereof could be construed as including  
20 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
21 Paragraph 40.

22           42. Answering Paragraph 41 of the Complaint, Intervenor-Defendants deny  
23 each and every allegation therein on the grounds that such allegations pertain to  
24 legal arguments and conclusions and are not factual allegations that must be  
25 admitted or denied. Insofar as the allegations thereof could be construed as including  
26 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
27 Paragraph 41.

28           43. Answering Paragraph 42 of the Complaint, Intervenor-Defendants deny

1 each and every allegation therein on the grounds that such allegations pertain to  
 2 legal arguments and conclusions and are not factual allegations that must be  
 3 admitted or denied. Insofar as the allegations thereof could be construed as including  
 4 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
 5 Paragraph 42.

6 44. Answering Paragraph 43 of the Complaint, Intervenor-Defendants deny  
 7 each and every allegation therein on the grounds that such allegations pertain to  
 8 legal arguments and conclusions and are not factual allegations that must be  
 9 admitted or denied. Insofar as the allegations thereof could be construed as including  
 10 any allegations of fact, Intervenor-Defendants deny each and every allegation of  
 11 Paragraph 43.

## 12 **AFFIRMATIVE DEFENSES**

### 13 **First Affirmative Defense**

#### 14 **(Failure to State a Claim)**

15 45. The Complaint, in its entirety and through each separately stated cause  
 16 of action, fails to state a cause of action upon which relief can be granted.

### 17 **Second Affirmative Defense**

#### 18 **(Res Judicata/Estoppel)**

19 46. The Complaint, in its entirety and through each separately stated cause  
 20 of action and theory of liability, has been thoroughly and completely adjudicated on  
 21 the merits in state and federal tribunals and is therefore barred by the doctrines of  
 22 res judicata and estoppel.

### 23 **Third Affirmative Defense**

#### 24 **(Laches)**

25 47. The Complaint is barred by the doctrine of laches.

### 26 **Fourth Affirmative Defense**

#### 27 **(Unclean Hands)**

28 48. The Complaint is barred by the doctrine of unclean hands.

**Fifth Affirmative Defense**  
**(Reservation of Affirmative Defenses)**

49. Intervenor-Defendants further allege that Plaintiffs have failed to set out their claims with sufficient particularity to permit Intervenor-Defendants to raise all appropriate affirmative defenses, and Intervenor-Defendants therefore reserve their right to amend or supplement its answer with additional affirmative defenses.

**PRAYER FOR RELIEF**

WHEREFORE, Intervenor-Defendants pray as follows:

1. That the Court grant Intervenor-Defendants leave to intervene in this case.
2. That the Complaint is dismissed in its entirety and judgment is entered in favor of Defendant and Intervenor-Defendants and against Plaintiffs.
3. That Intervenor-Defendants be awarded their costs in this action; and
4. That Intervenor-Defendants be awarded such other and further relief as this Court may deem proper, including but not limited to attorneys' fees.

Respectfully submitted,

Dated: January 31, 2025

NIELSEN MERKSAMER LLP

By: /s/ Christopher E. Skinnell  
Christopher E. Skinnell

*Attorneys for Intervenor-Defendants*  
CALIFORNIANS TO DEFEND THE  
OPEN PRIMARY and INDEPENDENT  
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